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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and  
Respondent,

v.

JUAN RENE MENDOZA-  
MEZA

Defendant and  
Appellant.

A165299

(Sonoma County  
Super. Ct. No.  
SCR7383951)

**OVERVIEW**

Defendant Juan Mendoza-Meza pleaded no contest to assault with a deadly weapon and cruelty to an animal. In connection with the assault with a deadly weapon plea, he also admitted the truth of the great bodily injury enhancing allegation. The trial court sentenced Mendoza-Meza to a total of six years in state prison. Following a contested restitution hearing, the trial court granted restitution in the amount of \$34,249, representing the attorney's fees the victim incurred in pursuing a civil settlement.

Challenging only the restitution order in this appeal, Mendoza-Meza argues that the trial court abused its discretion in awarding \$34,249 in attorney's fees. He contends the trial court should not have awarded all the fees incurred in obtaining the settlement, and should have instead limited the restitution amount by apportioning the attorney's fees based on the victim's Medi-Cal costs. We will affirm.

### **BACKGROUND<sup>1</sup>**

#### **Plea and Sentence**

On June 1, 2020, Mendoza-Meza drove into and hit victim Richard McCormick while McCormick was walking his dog on Las Lomas Road in Sonoma. The impact killed McCormick's dog at the scene. Emergency services transported McCormick to the hospital where he was treated for a collapsed lung and a fractured vertebrae. McCormick underwent surgery, spending four days in the hospital. McCormick then received pain management care for two years after the incident.

Mendoza-Meza ultimately pleaded no contest to assault with a deadly weapon (Pen. Code<sup>2</sup>, § 245, subd. (a)(1)) and cruelty to an animal (§ 597, subd. (a)), and he also admitted the great bodily injury enhancing allegation. (§ 12022.7, subd. (a).)

At the sentencing hearing, McCormick's wife read a victim impact statement on behalf of McCormick. In the statement,

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<sup>1</sup> Because this appeal deals only with the restitution order, we address the factual and procedural background only as necessary.

<sup>2</sup> Undesignated statutory citations are to the Penal Code.

McCormick stated he is no longer able to work because of his injuries from the incident, and his family is without his \$60,000 annual income. The trial court sentenced Mendoza-Meza to a total of six years in state prison and stated that it would award restitution. Mendoza-Meza objected and requested a hearing to contest the amount. The court set a hearing for a future date.

### Restitution Hearing

During the restitution hearing, Mendoza-Meza and the prosecution presented evidence, and the trial court awarded restitution in the full amount of attorney's fees, \$34,249. The court based its determination on two factors: (1) the preliminary hearing testimony in which the victim established that he sustained substantial injuries; and (2) the court's view that, given the evidence presented, there was no reasonable way to apportion the attorney's fees between those incurred to obtain recovery for economic versus noneconomic injuries.

Mendoza-Meza filed a timely appeal.

## **DISCUSSION**

### **I. Standard of Review**

We review a trial court's restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663 (*Giordano*).) Although the trial court is vested with broad discretion in setting the amount of restitution, that discretion is not unlimited. (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.) "[T]he trial court must use a rational method that could reasonably be said to make the victim whole and may not make

an order which is arbitrary or capricious.” (*Ibid.*) “An abuse of discretion will not be found if there is a factual or rational basis for the amount of restitution ordered.” (*People v. Fortune* (2005) 129 Cal.App.4th 790, 794.)

## **II. Governing Legal Principles Regarding Penal Code Section 1202.4 and Attorney’s Fees**

Victims have a constitutional right to restitution, and that right is broadly and liberally construed. (Cal. Const., art. I, § 28, subd. (b)(13); *People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) Section 1202.4, which implements the constitutional mandate, provides under subdivision (f)(3) that the restitution order “shall . . . reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct, including . . . [¶] . . . [¶] (H) [a]ctual and reasonable attorney fees and other costs of collection accrued by a private entity on behalf of the victim.” (§ 1202.4, subd. (f)(3)(H).)

Section 1202.4 does not authorize restitution for noneconomic losses. (*Giordano, supra*, 42 Cal.4th at p. 656.) “[A]ctual and reasonable attorney fees” constitute economic losses viewed as costs of collecting restitution. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 884–885 (*Fulton*).) But because restitution is permitted only for economic losses, attorney’s fees are recoverable only to the extent they were incurred in collecting economic losses. (*Id.* at pp. 883–885.)

Once the victim offers prima facie evidence showing the victim suffered economic losses and incurred reasonable

attorney's fees to recover those losses, the burden shifts to the defendant to demonstrate that a portion of the fees are non-recoverable because "those fees are attributable solely to a nonrecoverable category of noneconomic losses." (*Fulton, supra*, 109 Cal.App.4th at p. 886.) If the defendant fails to meet his burden, the trial court must order restitution in the full amount of attorney's fees. (*Id.* at p. 885.) This is because, as the *Fulton* court explained, "it would be improper to reduce the attorney fees incurred to obtain economic damages merely because those same attorney fees also led to the recovery of nonrecoverable damages." (*Ibid.*) The *Fulton* court further stated the burden shifts to the defendant because it is "the most desirable result in terms of [the] public policy" goal of fully reimbursing the victim. (*Id.* at p. 887.) Accordingly, even if the attorney's fees were incurred in collecting both economic and noneconomic losses, the full amount of attorney's fees must be awarded if the defendant fails to meet his burden of showing a reasonable means of apportioning the fees between economic and noneconomic losses in a way that ensures full compensation for the victim. (*Id.* at pp. 887–888.)

In establishing the restitution amount, the standard of proof is by a preponderance of the evidence (*People v. Baumann* (1985) 176 Cal.App.3d 67, 80), and the court is directed to base its determination on the "loss claimed by the victim . . . or any other showing to the court." (§ 1202.4, subd. (f).) Trial courts are given "virtually unlimited discretion as to the kind of information they

can consider and the source from [which] it comes.” (*People v. Hove* (1999) 76 Cal.App.4th 1266, 1275.)

### III. Analysis

The trial court properly exercised its discretion in finding that Mendoza-Meza failed to meet his burden of demonstrating that a portion of the fees were attributable solely to noneconomic losses. The trial court rationally based its order on the preliminary hearing testimony in which the victim established that he sustained substantial injuries and the defendant’s failure to establish a reasonable way of apportioning the attorney’s fees between those incurred to obtain recovery for economic versus noneconomic injuries.

At the restitution hearing, the prosecutor introduced the victim’s insurance settlement, People’s Exhibit 1<sup>3</sup>, and stated that the settlement breakdown did not specify what the settlement was stipulated to cover, except that the award covered both economic and noneconomic losses. Economic losses include past medical expenses, loss of property, loss of wages, and anticipated future medical expenses. (*Fulton, supra*, 109 Cal.App.4th at p. 887.)

Mendoza-Meza’s principal contention on appeal is that the Medi-Cal bill, which he claims is designated in the settlement breakdown, was the only evidence of economic loss presented at

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<sup>3</sup> People’s Exhibit 1 was not designated in the record on appeal. Mendoza-Meza recognizes that the exhibit is not in the record.

the hearing, and that that bill should have been the basis for apportioning attorney's fees.

We are unpersuaded by Mendoza-Meza's contention for two reasons. First, we cannot assess Mendoza-Meza's assertion because Exhibit 1 (which apparently sets forth the Medi-Cal costs) is not in the record on appeal. Mendoza-Meza bears the responsibility of putting before us every part of the record necessary to review the claims asserted on appeal. (See *People v. Whalen* (2013) 56 Cal.4th 1, 85.) "Where exhibits are missing, we will not presume they would undermine the judgment." (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291.) Since Exhibit 1 is not before us, we must conclude that the court's assessment of that evidence supported the court's restitution order.

Second, contrary to Mendoza-Mesa's contention, the record reflects that McCormick's economic losses were greater than just the Medi-Cal bill. Specifically, McCormick incurred future medical expenses from pain management care, as he continued to receive treatment for his injuries for two years, well after the civil settlement. In addition, McCormick stated that he had been unable to work because of his injuries, and as a result, lost a substantial amount of income.

Ultimately, based on McCormick's testimony at the preliminary hearing, subsequent evidence presented by McCormick at the sentencing hearing, and the prosecution's evidence at the restitution hearing, the trial court could have

reasonably inferred that the civil settlement comprised both previously-incurred Medi-Cal bills as well as anticipated future medical expenses and loss of earnings. (See *People v. Grundfor* (2019) 39 Cal.App.5th 22, 30.) We therefore conclude that the trial court did not abuse its discretion in finding that Mendoza-Mesa failed to satisfy his burden of establishing a basis for apportioning the attorney's fees between economic and noneconomic losses.

### **DISPOSITION**

The restitution order is affirmed.

BROWN, P. J.

WE CONCUR:

STREETER, J.  
GOLDMAN, J.

*People v. Mendoza-Meza* (A165299)